

HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
Writ Appeal No.803 of 2007

-
Between:

A. Prabhakar Gupta

... Appellant

And

The Chairman and Managing Director,
Central Power Distribution Company of
Andhra Pradesh Limited, Red Hills,
Hyderabad – 500 004 and two others

... Respondents

Counsel for the appellant : Shri Koka Srinivasa Kumar

Counsel for the respondents : Shri P.R. Balarami Reddy

-
-
-
::JUDGMENT::
-

-
-
October 1, 2007

Per G.S. Singhvi, CJ

This is an appeal for setting aside order dated 30-11-2006 passed by the learned Single Judge in Writ Petition No. 26987 of 2005, whereby he declined to entertain the appellant's challenge to the order of removal passed by Chairman and Managing Director,

Central Power Distribution Corporation of Andhra Pradesh Limited (respondent No.1 herein) and relegated him to the remedy of appeal in terms of Regulation 18 of the Andhra Pradesh State Electricity Board Employees' Discipline and Appeal Regulations, 1970 (for short, 'the Regulations').

The respondent was engaged as NMR in Gooty Construction Sub-Division, Anantapur of Andhra Pradesh State Electricity Board (for short 'the Board') on 1-6-1972. After six years, he was appointed as Helper in the same sub-division. He was appointed as Bill Collector with effect from 29-3-1980. In 1996, he was promoted as Upper Division Clerk. On 19-11-2001, he was placed under suspension on the allegation of misappropriation of funds. Shri C. Rami Reddy, District and Sessions Judge (Retired) who was appointed as Enquiry Officer submitted report dated 16-12-2004 with the finding that the charge of misappropriation of funds has been proved against the delinquent. The Chairman and Managing Director, Central Power Distribution Corporation of Andhra Pradesh Limited accepted the finding recorded by the Enquiry Officer and issued notice dated 7-3-2005 to the appellant requiring him to submit reply. After considering the reply, the Chairman and Managing Director passed order dated 1-9-2005, whereby he removed the appellant from service.

When the writ petition filed by the appellant was taken up for hearing by the learned Single Judge, counsel appearing for the parties appear to have made an agreed statement that an alternative remedy of appeal is available to the appellant under Regulation 18 of the Regulations and in that view of the matter, the learned Single Judge disposed of the writ petition in the following terms:

"Having regard to the fact that an alternative remedy of appeal

is provided against the impugned proceedings and in view of the agreed stand taken by both the counsel, I deem it appropriate to dispose of the writ petition granting liberty to the petitioner to prefer an appeal under Regulation 18 of the Discipline and Appeal Regulations, within a period of four weeks from the date of receipt of copy of this order. On filing such an appeal, the Appellate Authority is directed to consider the same and pass appropriate orders in accordance with law expeditiously.”

We have heard learned counsel for the parties and perused the provisions of the Regulations. Regulation 13 and not Regulation 18, which provides for the remedy of appeal against the order of punishment, reads as under:

“Appeal

Every employee of the Board shall be entitled to appeal to the appellate authority specified in column (10) of the table in Schedule as hereinafter provided from an order passed by an authority.

- (a) imposing upon him any of the Penalties in regulation 5;
- (b) discharging him in accordance with the terms of his contract, if he has been engaged on a contract for a fixed or for an indefinite period and has rendered under either form of contract, continuous service for a period exceeding five years at the time when his services are so discharged.
- (c) Placing him under suspension under regulation 11.
- (d) Every employee belonging to Class-I and II Service shall be entitled to appeal to the Board against any order passed by the Chairman or to the Chairman against any order passed by the Chief Engineer or a subordinate authority which interprets to his disadvantage the provisions of any service regulations or contract of service whereby his conditions of service, pay, allowance or pension are regulated.
- (e) Every employee belonging to Class-III and IV Service shall be entitled to appeal as indicated below against any order of the kind mentioned in Clause (a) above:-

Authorities passing order	Appellate authority
1. Orders passed by an officer of	Superintending Engineer

the Superintending rank of a Divisional Electrical Engineer or any other subordinate authority	concerned
2. Orders passed by an officer of the rank of Superintending Engineer/Project Engineer	Chief Engineer
3. Orders passed by the Chief Engineer	Chairman of the Board
4. Orders passed by the Secretary /Asst.Secretary to the Board	Chairman/Secretary of the Board as the case may be

(c) The appellate authority shall after considering the appeal pass such orders as appears to it just and equitable having regard to all the circumstances of the case.”

If Regulation 13 is read in conjunction with the entries contained in the schedule appended thereto, it becomes clear that for the post falling in class – III (the appellant was holding a class-III post i.e., Upper Division Clerk), the appointing authority is Superintending Engineer. Appeal against the order of punishment passed by the appointing authority lies to the next higher authority i.e., the Chairman of the Board.

In the present case, the order of punishment was passed by the Chairman and Managing Director i.e., respondent No.1. There is no provision in the Regulations for filing appeal against the orders passed by the Chairman and Managing Director. It is, thus, clear that the statement made by the learned counsel for the parties before the learned Single Judge which resulted in disposal of the writ petition by relegating of the appellant to the alternative remedy of appeal was based on misreading of the relevant regulations and on that account failure of justice has occasioned.

For the reason stated above, the appeal is allowed. The order of the learned Single Judge is set aside and the writ petition is restored to its original number. The same may now be listed for fresh adjudication before an appropriate Bench as per roster.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

October 1, 2007

ks